

Message Text

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PAGE 01 STATE 120274

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DEPARTMENT OF JUSTICE: MR. BRUNO RISTAU, RM 3613

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FM SECSTATE WASHDC

TO AMCONSUL HONG KONG PRIORITY

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USARMY CID COMMAND

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TAGS:CGEN

SUBJECT:U.S. V. SIMMONS, ET AL. S. CT. OF HONG KONG,

1975 NO. 856

REF: HONG KONG 5628 AND HONG KONG 5523

FOLLOWING RECEIVED FROM DEPARTMENT OF JUSTICE, MR. RISTAU:

1. DOJ APPRECIATES VIEWS EXPRESSED IN REFTTEL CONCERNING PRESS PUBLICITY. DOJ IS, OF COURSE, AWARE OF STRICTURES IMPOSED UPON PRESS BY BRITISH LAW RELATING TO ONGOING COURT PROCEEDINGS. (MINDFUL OF THIS PRINCIPLE DOJ, IN PRESS INTERVIEW WHICH GAVE RISE TO LAST SUNDAY'S AP STORY, DID NOT DWELL ON IDENTITY OF, AND ACTIVITIES OF, HONG KONG INDIVIDUALS AND COMPANIES NAMED IN SUIT). DOJ, HOWEVER, CANNOT ACCEPT PROPOSITION THAT HONG KONG LIBEL LAWS CAN DICTATE POLICIES OF USG IN THE NATION'S CAPITAL IN RELATION TO AMERICAN, RPT, AMERICAN PRESS WHEN-AS HERE- ACTIVITIES OF FORMER GOVT. OFFICIALS AND TAXPAYERS' MONIES
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PAGE 02 STATE 120274

ARE INVOLVED. ABSENT NATIONAL SECURITY CONSIDERATIONS, THE PUBLIC HAS A RIGHT TO KNOW WHAT STEPS THE GOVERNMENT IS

TAKING TO PROTECT THE PUBLIC INTEREST AND THE INTEGRITY OF THE PUBLIC PURSE.

2. CONGEN IS ASSURED THAT DOJ PRESS OFFICE WILL CONTINUE TO BE ADVERTENT TO HONG KONG LAWS IN ITS DEALINGS WITH PRESS. AS REGARDS LOCAL PRESS RELEASE, DOJ AGREES THAT IT WOULD BE PREFERABLE THAT NEITHER CONGEN NOR MR. STEVENSON COMMENT TO MEDIA. ALL PRESS INQUIRIES SHOULD BE REFERRED TO DOJ'S PRESS OFFICE IN WASHINGTON.

3. WITH REFERENCE TO PARA 3, REFTTEL, MR. STEVENSON SHOULD CONSIDER, IF NEED BE, EITHER AMENDING PRESENT WRIT OF SUMMONS, OR BRINGING A SEPARATE ACTION AGAINST SIMMONS SEEKING TO IMPRESS A CONSTRUCTIVE TRUST OR AN EQUITABLE LIEN ON THE REAL ESTATE AND AUTOMOBILES. IT IS AN ESTABLISHED PRINCIPLE OF ANGLO-AMERICAN JURISPRUDENCE THAT WHERE A PERSON WRONGFULLY TRANSFERS PROPERTY IN WHICH ANOTHER HAS THE BENEFICIAL INTEREST, AND ACQUIRES OTHER PROPERTY IN EXCHANGE THEREFORE, THE PERSON WHOSE PROPERTY IS WRONGFULLY USED IN ACQUIRING THE PRODUCT CAN REACH THE PRODUCT THROUGH THE DEVICE OF A CONSTRUCTIVE TRUST (I.E., HAVE SIMMONS DECLARED A TRUSTEE EX MALEFICIO FOR THE BENEFIT AND USE OF THE UNITED STATES), OR BY HAVING THE COURT IMPOSE AN EQUITABLE LIEN. UNDER AMERICAN LAW, THE INSTITUTION OF SUCH AN ACTION CAN BE ACCOMPANIED

BY AN IMMEDIATE RECORDATION OF LIS PENDENS IN THE REAL ESTATE REGISTRY AND IN THE MOTOR VEHICLE BUREAU WHERE TITLES TO VEHICLES ARE RECORDED AND TRANSFERRED. BY THIS DEVICE, ANY ATTEMPTED TRANSFERS OF THE PROPERTIES TO BONA FIDE PURCHASERS ARE EFFECTIVELY BLOCKED. REQUEST ADVISE FROM MR. STEVENSON WHETHER THIS LITIGATIVE OPTION AVAILABLE UNDER HONG KONG LAW, AND WHETHER LIS PENDENS NOTICES COULD BE RECORDED WITH THE APPROPRIATE LOCAL REGISTRARS. INGERSOLL

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